

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF MINNEHAHA

SECOND JUDICIAL CIRCUIT

ROBIN LEBEAU,

Civ. No. 18-_____

Plaintiff,

vs.

DR. WILSON ASPHORA [SIC: ASFORA]
AND JENNIFER GRENNAN, AGENT FOR
SANFORD MEDICAL CENTER,

Defendants.

**COMPLAINT AND
JURY DEMAND**

Plaintiff, Robin LeBeau, for her causes of action state and allege as follows:

THE PARTIES

1. Plaintiff, Robin LeBeau, was at all times relevant hereto a resident of South Dakota.
2. Defendant, Dr. Wilson Asfora (hereinafter "Asfora"), was at all times relevant hereto a citizen of the State of South Dakota. At all times material hereto, he has been licensed to practice medicine in the State of South Dakota and engaged in the practice of medicine in Sioux Falls, Minnehaha County, South Dakota.
3. Defendant Jennifer Grennan is, upon information and belief, a South Dakota resident and was an agent of Sanford Medical Center ("Grennan"), either by virtue of employment or authority to act on behalf of Sanford Medical Center, and was associated with Sanford Medical Center at all times material to the events alleged in this Complaint.

VENUE AND JURISDICTION

4. This Court has jurisdiction over the persons and subject matter of this action and venue is proper in this county because the events that form the subject matter of this action took place here.

MEDICAL NEGLIGENCE

5. On September 1, 2016, Defendant Asfora performed surgical procedures on Ms. LeBeau.

6. Asfora claimed to have removed a tumor from Ms. LeBeau's brain and informed Ms. LaBeau the brain surgery was necessary to remove a tumor, which he claimed was causing the symptoms she was experiencing at the time.

7. Medical records indicated that Ms. LeBeau did not have the type of tumor Asfora claimed – rather, she had a condition known as Rathke's cleft cyst.

8. The surgery Asfora performed was not necessary and Ms. LaBeau did not provide informed consent because Asfora did not understand or explain the true nature of Ms. LaeBeau's condition.

9. If Asfora had carefully read Ms. LaBeau's medical records, he would have learned about the condition and would not have performed the brain surgery.

10. Instead of correcting any condition or removing a tumor (which other medical providers have concluded did not exist), Asfora's surgery caused brain injury to Ms. LaBeau and has adversely impacted her life in many ways, including memory loss, physical disability, the loss of employment and both past and future medical care and treatment.

11. Defendant Asfora deviated from the applicable standard of care regarding the procedures performed as follows:

- a. Failing to obtain informed consent for the procedures performed;
- b. Failing to timely and appropriately diagnose Plaintiff's condition prior to surgery;
- c. Performing unnecessary and untimely procedures on Plaintiff;
- d. Failing to investigate Plaintiff's condition and failing to provide treatment that would have prevented surgical procedures;
- e. Failing to obtain nerve conduction studies or neurology consultation prior to surgery;
- f. Failing to properly perform the surgical procedures;
- g. Failing to timely and appropriately provide post-operative treatment;
- h. Failing to refer Plaintiff to a neurologist or pain management specialist post- operatively; and
- i. Other acts and omissions that will be detailed and explained by Plaintiff's expert(s).

12. Defendant Asfora's negligence resulted in severe injury and complications to Plaintiff.

13. At all times relevant hereto Defendant Asfora owed to Plaintiff a duty to possess and exercise the degree of specialized knowledge, skill, care, caution, diligence, and foresight that is possessed and exercised by other reasonably careful and prudent health care professionals practicing podiatry in their field.

14. Defendant Asfora breached his duty and the applicable standards of care owed to Plaintiff by failing to use the degree of specialized knowledge, skill, care, caution, diligence, and foresight during the surgery and subsequent period of podiatric treatment.

15. That as the direct and proximate result of the medical negligence of Defendant, Plaintiff has suffered, and will continue to suffer, from great pain, physical injury, physical impairment, physical disability, mental anguish, loss of income and employability, loss of enjoyment of life, and other special and general damages.

16. That as the direct and proximate result of the medical negligence of Defendant, Plaintiff has incurred past medical bills and expenses, transportation costs, and will incur future medical bills and expenses and other special damages to be proven at trial.

WHEREFORE, Plaintiff respectfully prays for judgment against Defendants as follows:

1. For general damages in an amount which the jury determines is just and proper;
2. For special damages in an amount which the jury determines is just and proper;
3. For costs and disbursements herein;
4. For interest as provided by law; and
5. For any other and further relief which the Court determines is just and proper.

PLAINTIFF DEMANDS TRIAL BY JURY

Dated: September 17, 2018

Robin H. LeBeau
Robin LeBeau, *Pro Se Plaintiff*
P.O. Box 188
Eagle Butte, SD 57625

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

ROBIN LEBEAU,

CIV. 18-3200

Plaintiff,

vs.

DR. WILSON ASPHORA [SIC: ASFORA].

Defendant.

**NOTICE OF ENTRY OF PARTIAL
JUDGMENT OF DISMISSAL**

PLEASE TAKE NOTICE that a Partial Judgment of Dismissal dated the 18th day of December, 2018, a true and correct copy of which is attached hereto and by this reference made a part hereof as fully as if set forth at length and in detail herein, has been entered, filed, and recorded in the above-entitled action in the office of the above-entitled Court on the 19th day of December, 2018.

Dated at Sioux Falls, South Dakota, this 19 day of December, 2018.

EVANS, HAIGH & HINTON, L.L.P.

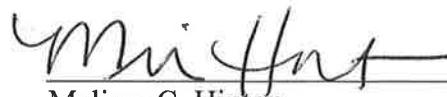
Melissa C. Hinton
101 N. Main Avenue, Suite 213
PO Box 2790
Sioux Falls, SD 57101-2790
Telephone: (605) 275-9599
Facsimile: (605) 275-9602
Email: mhinton@ehhlawyers.com
Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Defendant, hereby certifies that a true and correct copy of the foregoing "Notice of Entry of Partial Judgment of Dismissal" was served via electronic mail and U.S. Mail upon:

Robin LeBeau
PO Box 188
Eagle Butte, SD 57625
r_turningheart@yahoo.com
Pro Se Plaintiff

on this 17 day of December, 2018.



Melissa C. Hinton

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

ROBIN LEBEAU,

CIV. 18-3200

Plaintiff,

vs.

DR. WILSON ASPHORA [SIC: ASFORA]
AND JENNIFER GRENNAN, AGENT FOR
SANFORD MEDICAL CENTER,

Defendants.

**STIPULATION FOR AND PARTIAL
JUDGMENT OF DISMISSAL OF
DEFENDANT JENNIFER GRENNAN,
AGENT FOR SANFORD MEDICAL
CENTER, ONLY**

Plaintiff and Defendants, by and through their counsel of record, Melissa C. Hinton and Evans, Haigh & Hinton, L.L.P., hereby stipulate and agree to the dismissal on the merits with prejudice of the above-entitled action against Jennifer Grennan, Agent for Sanford Medical Center, and hereby dismiss the same, each party to bear their own costs, expenses, and attorneys' fees. This Stipulation for and Partial Judgment of Dismissal is not intended to affect the Plaintiff's claims against Dr. Wilson Asphora [Sic: Asfora].

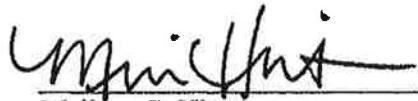
It is further agreed that the caption on all future pleadings filed in this action shall reflect the dismissal of Defendant Jennifer Grennan, Agent for Sanford Medical Center, from this action.

Dated at Eagle Butte, South Dakota, this 28th day of November, 2018.

Robin J. LeBeau
Robin LeBeau
PO Box 188
Eagle Butte, SD 57625
Pro Se Plaintiff

Dated at Sioux Falls, South Dakota, this 18th day of December, 2018.

EVANS, HAIGH & HINTON, L.L.P.



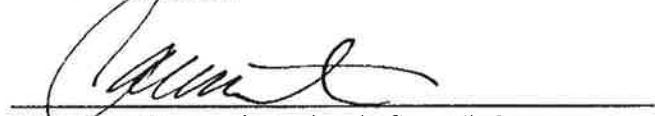
Melissa C. Hinton
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PO Box 2790
Sioux Falls, SD 57101-2790
Telephone: (605) 275-9599
Facsimile: (605) 275-9602
Email: mhinton@ehhlawyers.com
Attorneys for Defendants

PARTIAL JUDGMENT OF DISMISSAL

Upon the foregoing stipulation of counsel, it is hereby ORDERED, ADJUDGED, AND DECREED that the Complaint of the Plaintiff and all causes of action thereunder against Jennifer Grennan, Agent for Sanford Medical Center, are dismissed, with prejudice, and without costs or further notice to any of the parties. It is further ORDERED, ADJUDGED, AND DECREED that partial dismissal does not affect the Plaintiff's claims against Dr. Wilson Asphora [Sic: Asfora] and that the caption on all further pleadings filed in this matter shall reflect the dismissal of Defendant Jennifer Grennan, Agent for Sanford Medical Center, from this action.

Dated at Sioux Falls, South Dakota, this 18th day of December, 2018.

BY THE COURT:


Hon. Camela Theeler, Circuit Court Judge

ATTEST:

ANGELIA GRIES, Clerk

By Jaymii L. Bell
Deputy



STATE OF SOUTH DAKOTA)
: SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

ROBIN LEBEAU,

CIV. 18-3200

Plaintiff,

vs.

DR. WILSON ASPHORA [SIC: ASFORA]
AND JENNIFER GRENNAN, AGENT FOR
SANFORD MEDICAL CENTER,

Defendants.

**SEPARATE ANSWER OF
DEFENDANT DR. WILSON ASFORA**

Defendant Dr. Wilson Asfora, by and through his attorneys of record, Melissa C. Hinton and Melinda J. Folkens, of Evans Haigh & Hinton LLP, for his Separate Answer to Plaintiff's Complaint, states and alleges as follows:

1. Dr. Asfora denies each and every matter, allegation, and thing in Plaintiff's Complaint except as expressly admitted below.
2. Dr. Asfora admits, upon information and belief, the allegations contained in Paragraph 1 of Plaintiff's Complaint.
3. Responding to Paragraph 2 of Plaintiff's Complaint, Dr. Asfora admits that he was a resident of the State of South Dakota, was engaged in the practice of medicine in Minnehaha County, and was a licensed medical doctor in South Dakota at the time of the allegations in the Complaint.
4. Paragraph 3 of Plaintiff's Complaint is directed to another Defendant and no response is required on behalf of Dr. Asfora.

5. Responding to Paragraph 4 of Plaintiff's Complaint, Dr. Asfora does not dispute that jurisdiction and venue are proper.

6. Responding to Paragraph 5 of Plaintiff's Complaint, Dr. Asfora admits that he attempted a transsphenoidal cyst removal on Plaintiff on September 1, 2016.

7. Dr. Asfora denies the allegations at Paragraphs 6, 7, 8, and 9 of Plaintiff's Complaint.

8. Dr. Asfora denies the allegations at Paragraphs 10, 11, and 12, and also denies any negligence, breach of the applicable standard of care, or other actionable conduct on his part which caused or contributed to any of Plaintiff's alleged injuries, losses, or damages.

9. Paragraph 13 of Plaintiff's Complaint contains an allegation of law to which no response is required. To the extent a response is required, Dr. Asfora states that he owed duties to Plaintiff in accordance with the laws of the State of South Dakota, but Dr. Asfora denies that he is a podiatrist or that the standard of care applicable to podiatrists in any way relates to the standard of care applicable to neurosurgeons.

10. In response to Paragraph 14 of Plaintiff's Complaint, Dr. Asfora denies that he breached any professional duty of care or was negligent in the medical care and treatment he provided to Plaintiff. Dr. Asfora further denies that he provided any podiatric treatment to Plaintiff.

11. Responding to Paragraphs 15 and 16 of Plaintiff's Complaint, Dr. Asfora denies any negligence, breach of the applicable standard of care, or other actionable conduct on his part which caused or contributed to any of Plaintiff's alleged injuries, losses, or damages.

12. Dr. Asfora denies the nature, scope, and extent of Plaintiff's claimed injuries, losses, and damages.

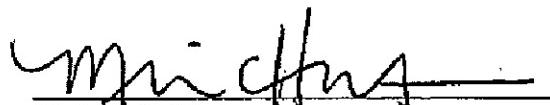
13. Affirmatively responding, Plaintiff's Complaint may be barred by the applicable statute of limitations or repose.

14. Affirmatively responding, this Court lacks personal jurisdiction over Dr. Asfora due to insufficiency of process and insufficiency of service of process.

WHEREFORE, Dr. Asfora prays that Plaintiff's Complaint be dismissed on the merits and with prejudice and that Dr. Asfora recover his costs and disbursements together with such other and further relief as the Court deems just and proper.

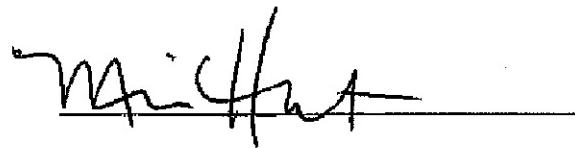
Dated at Sioux Falls, South Dakota, this 25 day of October, 2018.

EVANS, HAIGH & HINTON, L.L.P.


Melissa C. Hinton
Melinda J. Folkens
101 N. Main Avenue, Suite 213
PO Box 2790
Sioux Falls, SD 57101-2790
Telephone: (605) 275-9599
Facsimile: (605) 275-9602
Email: mhinton@ehhlawyers.com
mfolkens@ehhlawyers.com
Attorneys for Defendants

DEMAND FOR TRIAL BY JURY

Dr. Asfora demands trial by jury on all issues of fact.



CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Defendants, hereby certifies that a true and correct copy of the foregoing "Separate Answer of Defendant Dr. Wilson Asfora" was served by U.S. mail upon:

Robin LeBeau
PO Box 188
Eagle Butte, SD 57625
Pro Se Plaintiff

on this 12 day of October, 2018.

Mickus

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

ROBIN LEBEAU,
Plaintiff,
vs.
DR. WILSON ASPHORA [SIC: ASFORA],
Defendant.

CIV. 18-3200

**AFFIDAVIT OF MELISSA C. HINTON IN
SUPPORT OF DEFENDANT'S MOTION
TO COMPEL DISCOVERY**

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF MINNEHAHA)

Melissa C. Hinton, being duly sworn on her oath, deposes and states as follows:

1. I am a member of Evans, Haigh & Hinton, L.L.P., attorneys for the Defendant in the above-captioned matter. I submit this Affidavit in Support of Defendant's Motion to Compel Discovery.

2. Attached hereto as Exhibit 1 is a true and correct copy of Defendant Dr. Wilson Asfora's Interrogatories and Requests for Production of Documents to Plaintiff (First Set), which were served on October 12, 2018.

3. To date, Plaintiff has served no responses to Dr. Asfora's Interrogatories and Requests for Production of Documents to Plaintiff (First Set), other than returning executed copies of two medical authorizations (Avera Medical Group Pierre and Mayo Clinic).

4. Attached hereto as Exhibit 2 is a true and correct copy of the November 23, 2018 email I received Plaintiff, which is cited in the Brief in Support of Defendant's Motion to Compel Discovery.

5. Attached hereto as Exhibit 3 is a true and correct copy of the November 26, 2018 letter I sent to Plaintiff, which is cited in the Brief in Support of Defendant's Motion to Compel Discovery.

6. Attached hereto as Exhibit 4 is a true and correct copy of the November 26, 2018 email I received from Plaintiff, which is cited in the Brief in Support of Defendant's Motion to Compel Discovery.

7. Attached hereto as Exhibit 5 is a true and correct copy of the December 14, 2018 email I received from Plaintiff, which is cited in the Brief in Support of Defendant's Motion to Compel Discovery.

8. Attached hereto as Exhibit 6 is a true and correct copy of the December 14, 2018 letter I sent to Plaintiff, which is cited in the Brief in Support of Defendant's Motion to Compel Discovery.

9. Attached hereto as Exhibit 7 is a true and correct copy of the January 23, 2019 letter I sent to Plaintiff which is cited in the Brief in Support of Defendant's Motion to Compel Discovery.

10. Attached hereto as Exhibit 8 is a true and correct copy of the January 31, 2019 letter I sent to Plaintiff which is cited in the Brief in Support of Defendant's Motion to Compel Discovery.

11. Attached hereto as Exhibit 9 is a true and correct copy of the January 31, 2019 email I received from Plaintiff, which is cited in the Brief in Support of Defendant's Motion to Compel Discovery.

12. Attached hereto as Exhibit 10 is a true and correct copy of the February 1, 2019 letter I sent to Plaintiff, which is cited in the Brief in Support of Defendant's Motion to Compel Discovery.

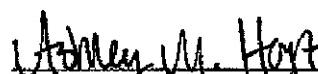
Further affiant sayeth not.

Dated at Sioux Falls, South Dakota, this 1st day of April, 2019.



Melissa C. Hinton

Subscribed and sworn to before me this 4th day of April, 2019.



Notary Public, South Dakota

My commission expires: 7/14/22

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for the Defendant, hereby certifies that a true and correct copy of the foregoing "Affidavit of Melissa C. Hinton in Support of Defendant's Motion to Compel Discovery" was served via U.S. mail upon:

Robin LeBeau
PO Box 188
Eagle Butte, SD 57625
Pro Se Plaintiff

on this 4th day of April, 2019.

